IN THE

SUPREME COURT OF THE UNITED STATES

_____Term

No._____

HAYMARKET CO-OPERATIVE BANK

v.

CONCETTA L. GOLANT, TRUSTEE ET AL

ROBERT V. PACE, Petitioner

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

ROBERT V. PACE
200 Great Road
Bedford, Massachusetts
Petitioner

PETITION
FOR A WRIT
OF CERTIORARI

Petitioner,

ROBERT V. PACE
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CONCETTA I. GOLANT, TRUSTEE ET AL
ROBERT V. PACE, Petitioner

PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

TO THE HONORABLE, THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES

Petitioner, Robert V. Pace, pray for a Writ of Certiorari to review the judgment of the United States Court of Appeals for the First Circuit entered on December 11, 1970, Docket No. 7738.

OPINION BELOW

In an order entered September 18, 1970, the Petition For Removal was dismissed by the United States District Court for the District of Massachusetts, for the reason, among others, of lack of jurisdiction.

The opinion of the United States Court of Appeals for the First Circuit entered on December 11, 1970, denied the petitioner the right to property without due process of law.

The opinion of the United States Court of Appeals for the First Circuit entered on December 11, 1970 denied petitioner right to be heard.

In a Memorandum and Judgment entered December 11, 1970, by the United States Court of Appeals for the First Circuit, mandate was ordered forthwith.

JURISDICTION

The court's jurisdiction is invoked under United States Constitution, Article III, Section 1.

> The judicial Power of the United States shall be vested in one Supreme Court and in such inferior Courts as the Congress may from time to time ordain and establish.

AMENDMENT IV

The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue....

AMENDMENT V

No person shall be held to answer for a capital, or otherwise....nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

CASES BELIEVED TO SUSTAIN JURISDICTION

United States v. Classic, 313 U.S. 299(1941). Stone, C.J., 5-3

The federal criminal code makes interference with constitutional rights a crime.

Smith v. Allwright, 321 U.S. 649(1944). Reed, 8-1

Constitutional rights would be of little value if they could be thus indirectly denied by an instrumentality of the State.

United States v. Price, 383 U.S. 787(1966). Fortas, U.

The indictments were dismissed in the lower court on the grounds that a federal law based on Section 5 of the 14th Amendment could only be used against state officials. The Supreme Court reversed, saying that since it was alleged the individuals here acted in concert with the police in denying rights, they acted under "color of law," and this was sufficient state action for the federal law to be applicable against any one who deprived a person of constitutional rights.

Elliot v. Peirsoll, 26 U.S. (1Pet.) 328 7 L. Ed. 164 (1828)

> Where a court has jurisdiction, it has a right to decide every question which occurs in the cause; and whether its decision be correct or otherwise, its judgment until reversed is regarded as binding in every other court. But if it acts without authority, its judgments and orders are regarded nullities. They are not voidable, but simply void: and form no bar to a recovery sought. Even prior to a reversal in opposition to them. They constitute no justification; and all persons concerned in executing such judgments or sentences are considered in law, as trespassers.

Oyama v. California, 332 U.S. 633; 68 S.Ct. 269; 92 L.Ed. 249 (1948).

> In an opinion by Mr. Chief Justice Vinson (vote 6-3), a state statute violated the equal protection laws when a California land law discriminated against aliens. In this regard, the state's Soldiers and Sailors Act, being discriminatory, is in violation of the equal protection clauses of the Constitution.

Marbury v. Madison, 1 Cranch 137; 2 L.Ed 60 (1803)

Chief Justice Marshall ruled that if the right of a person has been violated, the laws of the United States afford him remedy and that the Constitution states that the Supreme Court will have appellate jurisdiction except in cases in which it has original jurisdiction, and therefore confirm this court's power to pass on the constitutionality of laws.

Powell v. Alabama, 287 U.S. 45(1932); Betts v. Brady, Warden 316 U.S. 455(1942); Gideon v. Wainwright, 372 U.S. 335(1963)

Justice Black, in line with Justice Sutherland's words in Powell v. Alabama found that state procedures, repugnant with the Constitution's 4th, 5th, 6th, 8th and 14th Amendments, were violations of the rights of due process and well within the purview of this court.

Martin v. Hunter's Lessee, 1 Wheaton 304; 4 L.Ed. 97(1816)

The Supreme Court has appellate jurisdiction over the decisions of state courts in matters involving federal and Constitutional questions because (a) state judges are called upon to decide cases according to the "supreme law of the land" (the Constitution, acts of Congress, and treaties),

and are, therefore, in a sense, federal judges, and (b) matters involving federal law, the Constitution and treaties must be uniform throughout the land, else chaos will develop.

Cohens v. Virginia, 6 Wheaton 264; 5 L.Ed. 257(1821)

The states are constituent parts of the United States -- for some purposes sovereign, for other subordinate. We are not many peoples but one. "The exercise of the appellate power over those judgments of the state tribunals which may contravene the Constitution of the laws of the United States is...essential to the attainment" of a national government that can maintain the vital interests of the nation.

QUESTIONS PRESENTED

The questions presented by this Petition For Writ of Certiorari to the United States Court of Appeals for the First Circuit do bring the questions within the purview of this Most Honorable Court and include:

1. The denial to the petitioner of his right to due process of law in a fair trial resulting from the complicity of attorneys and officials who suppressed from the

petitioner and the courts, material facts that, if made known, the courts would have ordered an immediate dismissal of the entry and foreclosure proceedings.

2. The denial of the petitioner of due process in a fair trial by attorneys who concealed the disbursement of mortgage funds and the amount in controversy being in excess of $10,000.

3. The failure of the appellee to provide proof as to their alleged property rights. Had the petitioner been able to present relevant evidence and testimony, the court would have clearly seen irreparable damages caused to the petitioner and further, by the denial of redress guaranteed under the Equal Protection Clauses of the Constitution of the United States thus raising a Constitutional question relative to the property rights of the petitioner.

STATUTORY PROVISIONS INVOLVED

The petitioner questions the applicability of 28 U.S.C. SS 1443 and 1446(a)(c) and (e) as was interpreted by the United States Court of Appeals for the First Circuit where subsequently representation by a real party of interest was denied.

The petitioner relied on 28 U.S.C. 1443 and 1446(a)(c) and (e) in that any party of interest may prosecute any suit and should the question arise as to the real party of interest, a decision by the Court should never be in the negative by which this petitioner seeks that this Honorable Court provide a speedy remedy for a citizen or a person unjustly deprived of property, immunities or privileges under the 5th Amendment of the Constitution of the United States.

The petitioner also relies on F.R.Civ.P. 17 in that it specifies that any party of interest may prosecute any suit.

STATEMENT OF THE CASE

The Haymarket Co-operative Bank, appellee, made claims of a mortgage interest in the amount of $33,000 on property valued at $60,000. and said being located at 1661 Trapelo Road, Waltham, against a certain Acorn Development, Inc., a corporation dissolved in April 1966, while the Haymarket Co-operative Bank claims that said mortgage was executed in May 1968 over two years subsequent to the dissolution of the said Acorn Development, Inc. under rules and articles of the Supreme Court of the Commonwealth of Massachusetts.

And further, the appellee then represented

to the Courts of the State that on May 1968, Acorn Development, Inc., non-existent corporation, allegedly transferred to a certain Concetta I. Golant, Trustee, the property in question, and said transfer was allegedly executed by a vote of the corporation (Acorn Development, Inc.) and said instrument being drawn, confirmed and approved by a certain Gerald Zyfers, the same attorney of the Appellee Bank, who signed under oath that he was the Clerk of Acorn Development, Inc., and thereby authorized to convey by affixing his hand to the mortgage instrument. The records of the corporation (Acorn) do not indicate that Zyfers was ever a Clerk or any officer of the corporation in question.

What the petitioner was attempting to say in the State Courts was that Gerald Zyfers was, in fact, not an officer of Acorn Development, Inc. as represented and that any documents executed would be ineffectual.

In addition, the same Gerald Zyfers, who accomplished this alleged conveyance through acts of conversion, purportedly brought foreclosure proceedings against Acorn Development, Inc. and Concetta I. Golant, Trustee, under a state statute called the Soldiers and Sailors Act, without reference of how the said act and

statute was material or relevant to the petitioner and owner inasmuch as your petitioner is neither a soldier or sailor.

Although the petitioner has claimed and alleged irregularities, the Haymarket Co-operative Bank has failed, after demands by the petitioner, to produce, show or prove that it has, in fact, a good, equitable and legal mortgage covenant against Acorn Development, Inc. and/or Concetta I. Golant, Trustee, and/or Robert V. Pace, your petitioner, and subsequently, the petitioner did file, at the Middlesex Superior Court in Equity, Case No. 30907, an Answer; Motion to Revoke Interlocutory Decree; Motion to Stay Judgment; Motion to Dismiss, and a Plea in Bar.

The said Middlesex Superior Court acted for your petitioner, whereupon without notice or leave of the court where the original action was brought, the appellee, through the use of devious, deceptive, fraudulent and illegal processes, proceeded to file the same action with the Suffolk County Superior Court Land Section and by a complicity of legal and judicial influences, obtained a decree while the property rested clearly in the jurisdiction of the Middlesex County.

Allegations were then made by Gerald Zyfers,

attorney for the said bank that all the proceeds were disbursed to Acorn Development, Inc., and said being in conflict with allegations made by a certain Anthony Viola, president of said bank, that proceeds were given to Robert V. Pace, your petitioner and real party in interest.

The Haymarket Co-operative Bank continued its proceedings in the Land Court for the County of Suffolk, under title of Haymarket Co-operative Bank vs. Acorn Development, Inc., Concetta I. Golant, Trustee, #60317 which were immediately opposed by your petitioner on August 1970 by way of a Motion to Intervene that was returned by the Clerk of the Land Court for the County of Suffolk and therefore not made part of the official permanent record as was intended by your petitioner, thus leaving your petitioner without remedy and deprived of due process of law by a fair and impartial trial as guaranteed by the Constitution of the United States.

The appellee thence proceeded to effect publication arrangements with the Waltham News Tribune for public sale of the petitioner's property over objection of the petitioner who then filed a Petition For Removal in the United States District Court for the District of

Massachusetts, and subsequent to the Removal while actions and appeals were pending, the appellee alleges that it has purchased the petitioner's property and was then given possession by the State Court, based on its Land Court decision, while the claims of your petitioner were suppressed by the action of the appellee.

The Haymarket Co-operative Bank alleged that it advanced mortgage proceeds to Acorn Development, Inc. and Robert B. Pace, et als, when, in fact, the entire proceeds of the mortgage were controlled and disbursed amongst themselves and to others by the same Gerald Zyfers who never provided accounting of the disbursements of the alleged mortgage to the petitioner.

REASONS FOR GRANTING THE WRIT

That the petitioner has exhausted every possible avenue of remedy available through the courts of the state and, more specifically, the courts of the Commonwealth of Massachusetts.

That the petitioner has, is and will continue to suffer irreparable damages as a result of the decisions of the state court.

That the petitioner cannot enforce his rights within the courts of the state with any

degree of fair play.

That the petitioner has, is and will continue to be subjected to harassments and deprivation by the political and judicial influences within the courts of the state.

That the petitioner, being denied a fair trial within the courts of the state, is further being denied the protection guaranteed by the Constitution of the United States when the United States District Court refused to accept jurisdiction in a manner to offer any supervisory or appellant powers over the activities of the state court.

That the petitioner was further denied the rights to a fair trial for reasons of bringing forth evidence that, if made known, would have clearly indicated the validity of the petitioner's claims when the United States Court of Appeals for the First Circuit refused to reverse the decision of the United States District Court and accept jurisdiction.

That the only, last and real course of proceedings left for the petitioner is this Petition for Writ of Certiorari to issue in order that the supervisory powers of the United States Supreme Court be extended for purposes of protecting and upholding the guarantees under the Constitution of the United States.

This court should be made aware of the attitude and disrespect exhibited by the judges of the state court by statements made in open court, which included such items as "I don't believe the Supreme Court would hear this case. Therefore, I am ruling in favor of the bank" when your petitioner asked the court to stay any further proceedings for reason of petitioning the United States Supreme Court for Certiorari.

That the state court, being made knowledgable of that this case was being appealed, did, nevertheless, proceed to allow the Haymarket Co-operative Bank to gain possession while refusing to your petitioner a fair trial by jury.

That the Haymarket Co-operative Bank, through the office of its president, a certain Anthony Viola, and said being a key instrument in the appointment of judges and other high political offices leaves your petitioner without equal protection by cases tried before the same judges that were either directly or indirectly appointed with the assistance and nomination of the said Anthony Viola.

That a complicity of state judges and attorneys have concerted to deny your petitioner a fair trial wherein evidence could be brought forth that would clearly show the merits of

your petitioner's contentions of deprivation of property under color of due process of law, custom and usage.

That the petitioner is being denied and deprived of property without due process of law by the same contingent and complicity of the bank with its attorneys on their own initiative, did proceed to transfer title to the property and thenceforth through Land Court proceedings, the appellee did continue to gather the fruits from a poisonous tree by illegal foreclosures and contrived, erroneous and illegal sales.

RELATED EVENTS

In order that this Court establish some order of semblance and relationship to the irregularities and material facts presented, it may consider these allegations of the petitioner:

A. That the Haymarket Co-operative Bank did not advance to the petitioner the sum total of $33,000. as claimed by their alleged mortgage.

B. That any advancements or proceeds of the alleged mortgage were never made to the petitioner, real owner and party of interest.

C. That a bill of accounting for the proceeds of said alleged mortgage was never provided to the petitioner.

D. The petitioner was never provided with any executed copies relevant to the alleged mortgage.

The petitioner's allegations arising from what he believes to be probable cause of guilt, by actions and activities relevant and related, cannot be proved or disproved but are merely facts or statements leaving the only positive results, that, in fact, if such allegations are material, the guilty shall forever remain free of punishment with reason and motive to encourage further illegal actions and the petitioner will have been unjustly deprived of his rightful property.

SUMMARY

Your petitioner prays that this Most Honored Court does grant this Petition for a Writ of Certiorari for the main purpose that your petitioner, having exhausted all other remedies and his rights being unenforcable in the courts of the state leaves only the conscience and fairness of this court of last resort for intervention.

The meaning and spirit of the common law, the Magna Carta and the Constitution of the

United States are violated by the very acts of the appellee, and such efforts exhibited in fair play of Washington, Lincoln, Hancock, Franklin, Marshall and Frankfurter would be nothing more than empty words called Justice, Equality and Righteousness.

Your petitioner asks that this court does not suffer a shabby thing in the denial of a fundamental right of an impartial trial by jury in a court of the United States and that words, volumes, cases and decisions precedented by this court do not become meaningless references left only to gather dust on shelves for ultimate withering and decay.

CONCLUSION

This Honorable Court should grant this Petition For Writ of Certiorari to review the errors of the United States Court of Appeals for the First Circuit and the United States District Court, when these lower tribunals failed to review proceedings of the courts of a State, that was clearly repugnant to the Constitution and Laws of the United States.

Respectfully submitted,

Robert V. Pace
Petitioner

APPENDIX A

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

HAYMARKET CO-OPERATIVE BANK — CIVIL ACTION NO. 70-1233-M

v.

CONCETTA I. GOLANT, TRUSTEE and
ROBERT V. PACE

ORDER

September 18, 1970

MURRAY, DISTRICT JUDGE

After examination of this so-called Petition for Removal by one whose standing is not apparent, and all the papers accompanying the same filed therewith, it is ORDERED that the petition be and it hereby is dismissed for the reason, among others, of lack of jurisdiction.

By the Court,
/s/ Robert J. Smith, Jr.
Deputy Clerk

/s/ Frank J. Murray
United States District Judge

APPENDICES B + C

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 7738

HAYMARKET CO-OPERATIVE BANK
Plaintiff, Appellee

v.

CONCETTA I. GOLANT, TRUSTEE ET AL.,
Defendants

ROBERT V. PACE,
Defendant, Appellant

Before ALDRICH, Chief Judge,
McENTEE and COFFIN, Circuit Judges.

MEMORANDUM AND JUDGMENT

Entered: December 11, 1970

Haymarket Co-operative Bank instituted an action in the state court to foreclose a mortgage allegedly given it by Acorn Development, Inc. One Robert V. Pace, thereafter appearing on the mortgagor's behalf,* filed various motions and pleas, including a motion to intervene individually. Thereafter he filed in the

district court a petition for removal, allegedly pursuant to28 U.S.C. SS 1443 and 1446 (a)(c) and (e). Accompanying said motion was a so-called "Statement of Facts Relevant to Petition for Removal." The district court entered an order to the following effect.

> "After examination of this so-called petition for removal by one whose standing is not apparent, and on the basis of the accompanying file, herewith it is ordered that petition be and hereby is, dismissed for the reason, among others, of lack of jurisdiction."

Appellant in his individual capacity appealed.

The so-called Statement of Facts accompanying the petition, although three pages in length, suggests nothing remotely within any possible construction of sections 1443 and 1446 aforesaid. No useful purpose would be served in summarizing its contents. The petition is patently frivolous and the court's dismissal for lack of jurisdiction clearly correct. The appeal is dismissed under local Rule 6, first paragraph, on the court's own motion, as manifesting no possible question.

There should be no interference with the state court proceedings upon such a frivolous a claim. Because, in the opinion of all members of the court, there is no conceivable basis for a successful petition for certiorari, mandate is ordered forthwith.

By the Court:

Clerk

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*From the file we gather that Pace is president of the mortgagor. From previous

contacts we believe he is not a member of the bar. For present purposes we disregard this latter circumstance, although it may explain some of the actions that he took, both in the state court and in this court, which we would otherwise find legally incomprehensible.

CERTIFICATE OF SERVICE

I certify that on the date shown below, I deposited in the U. S. Mail service at Boston, Massachusetts, with postage prepaid in an amount to assure delivery, a true and exact copy of the foregoing, addressed to the Haymarket Co-operative Bank, 315 Hanover Street, Boston, Massachusetts.

March 10, 1971

_____

Robert V. Pace